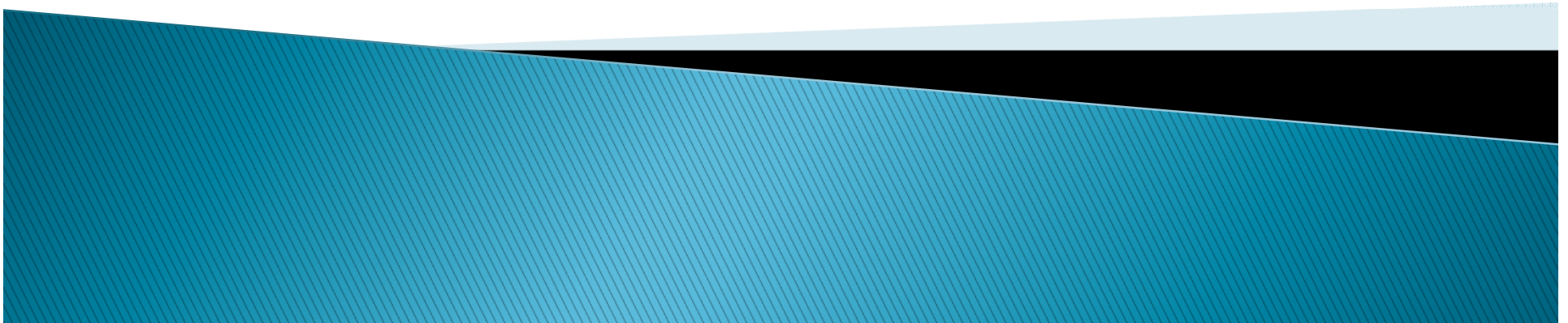


Proposed Amendments to Local Rules of Court

Effective July 1, 2014



Repeal

CHAPTER 5 – CONSERVATORSHIPS AND GUARDIANSHIPS

5.01 FILINGS

- A. With the exception of Judicial Council Forms, all separately filed Pleadings must include in the caption, the date, time, and place of hearing.
- B. In all case types, Petitioners must provide information related to their personal residential address, home telephone number, work address, work telephone number, and cell phone number, if any. This information may be filed as a confidential document.
- C. A copy of all documents filed in a conservatorship proceeding must be served on the Court Investigator at the Monterey Division of the Superior Court located at 1200 Aguajito Road, Monterey, CA 93940. Service may not be made to the Court investigator via facsimile without prior authorization from the Investigator's assistant. Service on the Investigator shall be reflected on the appropriate Proof of Service or Notice of Hearing filed with the Court.
- ~~D. In accordance with the Information Practices Act of 1977 (Civil Codes sections 1798-1798.97), all files that contain any "personal information" identifying or describing an individual by means of those which include, but are not limited to, social security number, home address or telephone number, financial matters, maiden name, medical or employment records, driver's license, or statements made by, or attributed to, the individual, shall be filed with the Court as confidential documents. The information contained in these files shall only be disclosed where and how the Information Practices Act of 1977 permits.~~
- ~~E. The filing of original bank statements is required where necessary. The submitting party may, however, file photocopies of the original bank statements if the submitting party verifies that the photocopies are true and correct copies of the original bank statements and have been personally reviewed by counsel. The last four (4) digits of all bank accounts shall be redacted.~~
- ~~F. The Court Investigator fee for the initial filing and the first annual court review must be paid at the time the petition is filed in the following instances: Petition for Appointment of Probate Conservator, Petition for Appointment of Temporary Conservator, Conservator's Accountings when heard in conjunction with a Court Review, and/or Petition to Change Conservatee's Residence. If the Conservator believes the fees should be deferred or waived due to hardship, the subject petition shall include a request for deferral or waiver and shall set forth facts to establish a hardship. The Court will not hear any petitions for the~~

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~~payment of fees to either the conservator or the attorney for the conservator unless all Court Investigator Fees have been paid, deferred or waived.~~

Repeal

CHAPTER 5 – CONSERVATORSHIPS AND GUARDIANSHIPS

5.04 CONSERVATOR OF DEVELOPMENTALLY DISABLED PERSON


~~If the proposed conservatee is a developmentally disabled person (Probate Code section 1420), a “Petition for Limited Conservatorship” is mandatory. For further guidance relating to the requirements and procedures of Probate Code section 1471(c), 1827.5, 1828.5, 1830, 1830(b) and 2351.5 see Local Rule 5.09. For those who do not have a developmental disability, a petition for a standard probate conservatorship is appropriate.~~

(Rule 5.03(a) previously Adopted effective October 1, 1998; Amended effective January 1, 2001; Amended effective July 1, 2001; Amended effective January 1, 2002; Amended effective January 1, 2007; Renumbered to 5.04 and Amended effective January 1, 2009, Repealed effective July 1, 2014)

5.05 SUPPLEMENTAL INFORMATION

~~All petitions must be accompanied by supplemental information pursuant to Probate Code section 1821(a). The supplemental information shall be on the Judicial Council form.~~

(Rule 5.03(b) Renumbered as 5.05 and Amended effective January 1, 2009, Repealed effective July 1, 2014)



Repeal

CHAPTER 5 – CONSERVATORSHIPS AND GUARDIANSHIPS

5.06 NOTICE

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~~A. Notice to Conservatee. The Probate Code requires that conservatees receive notice of the hearing of conservatorship petitions. The Court will, however, accept a waiver of notice by the conservatee if the conservatee is competent to make such a waiver.~~

~~B. The petition requires a list of all relatives within the 2nd degree (parents, grandparents, children, grandchildren, and siblings). Notice of Hearing must be given to all such relatives and proposed conservatee's spouse in accordance with Probate Code section 1822. The list shall include the relationship of each person listed to the Conservatee.~~

~~If there are no relatives within the second degree and no spouse, the relatives described in Probate Code section 1821(b) must be listed and provided notice pursuant to Probate Code section 1822.~~

~~C. Notice may also be required to the Director of Mental Health, Director of Developmental Services, and/or the Veterans' Administration where appropriate in accordance with Probate Code section 1822.~~

~~D. A~~ A minimum of thirty (30) days notice is required for the Court Investigator to complete an investigation pursuant to Probate Code section 1826. An investigation is required in all cases even if the proposed conservatee is the petitioner and will attend the hearing.

(Rule 5.03(c) Renumbered as 5.06 and Amended effective January 1, 2009, Amended effective July 1, 2014)

Repeal

CHAPTER 5 – CONSERVATORSHIPS AND GUARDIANSHIPS

5.07 REQUIRED DOCUMENTS

The following documents are required to be filed with the petition for appointment of conservator: ~~regardless of whether proposed conservatee is the petitioner or will attend the hearing:~~

- A. ~~Where appointment of counsel is required under Probate Code section 1471(a), an ex parte order for appointment of counsel should be submitted when the petition is filed to avoid continuance or delay. The supplemental information described in 5.03(b), above and Judicial Council Form GC 312 "Confidential Conservator Screening Form."~~
- B. ~~Notice of Hearing (issued by Clerk's Office). Citation, to be issued by Clerk's Office, except where the proposed conservatee is the petitioner. Referral for Court Investigator-Conservatorship" (See Court website: www.monterey.courts.ca.gov)~~
- C. ~~"Referral for Court Investigator Conservatorship" (See Court website: www.monterey.courts.ca.gov) reflecting confidential information, present location of conservatee, telephone number, names of conservators, attorney of record, addresses, telephone number, and relationship of all the parties, relatives, friends, and neighbors.~~
- D. ~~If conservatee is medically unable to attend the hearing, a declaration from a licensed medical practitioner is required. Emotional or psychological instability is generally not sufficient cause. (Probate Code sections 1825(b) and (c)).~~
- E. ~~If the proposed conservatee is found unable to attend the hearing after filing of the petition, petitioner shall promptly file a Capacity Declaration from a licensed medical practitioner and provide a copy to the Court Investigator.~~

Repeal

CHAPTER 5 – CONSERVATORSHIPS AND GUARDIANSHIPS

~~5.08 – THE PETITION FOR PERMANENT CONSERVATORSHIP~~

~~A. There shall be a separate proceeding for each person for whom conservatorship is sought, and each petition shall provide the proposed conservatee's Social Security number.~~

~~B. Independent powers may not be requested except upon a noticed hearing, either as part of the initial petition or in a subsequently filed petition. (Probate Code sections 2592(c), 1460, et seq.) If Independent Powers under sections 2590 and 2591 are requested, an attachment to the petition shall specify the powers requested, and must state the reasons requiring the powers requested. Only those powers necessary and proper shall be granted.~~

~~Proposed restrictions or limitations on the Independent Powers must also be included. The Court will not grant Independent Powers to sell real property or to borrow money with real property as security, unless the bond includes the value of the real property and there are sufficient restrictions to guarantee conservatee's rights regarding the sale of a residence or former residence as contained in Probate Code section 2540(b).~~

~~C. That portion of the petition relating to inherent powers and duties of the conservator (sections 2351-2358) need not be completed unless petitioner wishes to limit or modify the conservator's powers. Unless restricted by the Court, the Conservator of the Person has the power to fix conservatee's residence inside the State of California (Probate Code section 2352), and the power to consent to or withhold consent for medical treatment, though not over conservatee's objection. (Probate Code section 2354)~~

~~D. If exclusive authority to consent to medical treatment is requested, that portion of the petition asking that conservatee be adjudged to lack capacity to consent to any form of medical treatment should be completed. Such powers are granted under Probate Code sections 1880, 1890, 2355 and 2357.~~

~~All petitions pursuant to Probate Code section 1880, including requests for those powers in the initial petition for conservatorship, must be accompanied by the declaration of a licensed physician, or a licensed psychologist within the scope of his or her licensure, indicating the conservatee or proposed conservatee lacks the capacity to give informed consent to any form of medical treatment and the reasons therefore in compliance with Probate Code section 1890(c). Declarations attesting only inability to attend the hearing for medical reasons do not comply with this requirement.~~

~~E. If Dementia Powers are sought, that portion of the petition asking that orders be issued relating dementia placement or treatment should be completed. Judicial Council Form GC-335 "Capacity Declaration Conservatorship" must also be completed and filed.~~

~~F. For conservatorship of estates:~~

~~1. The character and estimated value of the property of the estate must be provided;~~

~~2. The petition must state whether property proposed to be included is community or separate.~~

Repeal

CHAPTER 5 – CONSERVATORSHIPS AND GUARDIANSHIPS

5.09 PETITION FOR APPOINTMENT OF PROFESSIONAL CONSERVATOR

~~Where petitioner seeks to appoint a professional conservator, petitioner must allege that the proposed conservator is a professional conservator. The petitioner shall also allege whether the private professional conservator is registered in the Statewide Registry (Probate Code sections 2850 through 2856) and whether a current professional conservator's statement is on file with the Court and provide the registration number. (Probate Code sections 2340, 2341, 2342, 2343.)~~

(Adopted effective October 1, 1998; Amended effective July 1, 2001; Rule 5.04 Renumbered as 5.09 and Amended effective January 1, 2009, Repealed effective July 1, 2014)



Repeal

CHAPTER 5 – CONSERVATORSHIPS AND GUARDIANSHIPS

5.10 LIMITED CONSERVATORSHIPS

~~A. If the proposed conservatee has a "developmental disability", as defined in Probate Code section 1420, the petition must be for a Limited Conservatorship.~~

~~B. An assessment by the nearest regional center pursuant to Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and Institutions Code, as required by Probate Code section 1827.5, obviates the necessity of filing a "Confidential Supplemental~~

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~~Information", so long as such assessment provides the same information as that required by Probate Code section 1821(a).~~

~~C. An ex parte order for appointment of Public Defender or private counsel should be submitted when the petition is filed to avoid continuance or delay. Appointment of counsel for a proposed limited conservatee is mandatory. (Probate Code section 1471(c).)~~

~~D. The petition must specify what powers are requested for the conservator and which are proposed for retention by the conservatee. (Probate Code section 1830(b) and 2351.5.)~~

~~E. The Court may exercise its discretion only at the hearing. (Probate Code section 1828.5(d)) Where the Court finds, at the hearing, that the proposed conservatee lacks the capacity to perform all tasks necessary to provide for his/her needs, it may impose a standard probate conservatorship, instead of a limited conservatorship.~~

(Adopted effective October 1, 1998; Amended effective January 1, 2008; Rule 5.05 Renumbered as 5.10 effective January 1, 2009, Amended effective July 1, 2014)

Repeal

CHAPTER 5 – CONSERVATORSHIPS AND GUARDIANSHIPS

5.12 TEMPORARY CONSERVATORSHIPS

~~A. A petition for temporary conservatorship shall not be granted unless a petition for permanent conservatorship is on file and noticed for hearing.~~

~~B.A. Where a Petition for Appointment of Temporary Conservator is filed, the Court's Investigator's Office shall be personally served at least five (5) days before the scheduled hearing.~~

~~C. The Court will appoint a temporary conservator of the person and/or estate ex parte and without notice as required in Probate Code section 2250(c) only upon a factual showing that an urgent situation requires immediate attention. In all other situations 5 days personal notice is required.~~

~~D. Independent Powers pursuant to Probate Code sections 2590 and 2591 will not be granted under a temporary conservatorship without a noticed hearing as required by Probate Code sections 2592(e) and 1460.~~

~~E.B. Extraordinary powers for authority to give or withhold consent for medical treatment pursuant to either Probate Code sections 2355 or 2357 shall not be granted except upon a noticed hearing. Conservatee must attend the hearing unless unwilling or unable. If the~~

~~Conservatee will not attend, a personal interview and report by the Court Investigator pursuant to Probate Code sections 1892-1894 is required.~~

~~F. A temporary conservator may not fix a temporary conservatee's residence at a place different from where he/she resided prior to the commencement of the proceedings without a noticed hearing (Probate Code section 2253), except in the case of an emergency and pursuant to Probate Code section 2254. The proposed conservatee must attend the hearing, or the Court Investigator shall personally interview the proposed conservatee and report to the Court. Procedures required by Probate Code section 2253 shall be strictly followed.~~

~~G. A temporary conservator shall not sell or relinquish any lease or estate in real or personal property used as or within the conservatee's place of residence without a noticed hearing and specific approval of the Court. (Probate Code section 2252(e).)~~

~~H. Attorney and conservator fees are not payable under a temporary conservatorship, unless Probate Code section 2640 is satisfied.~~

~~I. An "Inventory and Appraisal" and an account must be filed within ninety (90) days after appointment of the temporary conservator, not the issuance of Letters. However, if the temporary conservator is appointed permanent conservator, the accounting for the period of temporary conservatorship may be included in the first annual account. (Probate Code sections 2255 and 2256.)~~

~~J.C. Temporary Letters of Conservatorship must state a date certain of expiration. This date shall not go beyond the date of the hearing on the permanent conservatorship. If a continuance is requested and allowed, new Letters will be issued upon request and shall expire on the continued date of the hearing.~~

~~K. Bond shall be required for a temporary conservatorship of the estate, except for estate assets deposited in an account requiring Court authorization to remove funds and where appropriate receipts are filed in the proceeding pursuant to Probate Code section 2328. Only under extraordinary circumstances will this requirement of a bond be waived.~~

(Adopted effective October 1, 1998; Rule 5.07 Renumbered as 5.12 and Amended effective January 1, 2009, Amended effective July 1, 2014)

Repeal


CHAPTER 5 – CONSERVATORSHIPS AND GUARDIANSHIPS

5.18 PLACEMENT ASSESSMENT EVALUATION

~~A placement assessment evaluation, pursuant to Probate Code Section 2352.5, shall be filed within 60 days of the establishment of all conservatorships, including those cases where only a conservatorship of the estate is established.~~

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*(Rule 5.18 Adopted effective October 1, 1998; Amended effective January 1, 2001;
Renumbered as 5.24 effective January 1, 2009; New Rule 5.18 Adopted effective January 1,
2009, Repealed effective July 1, 2014)*



Repeal

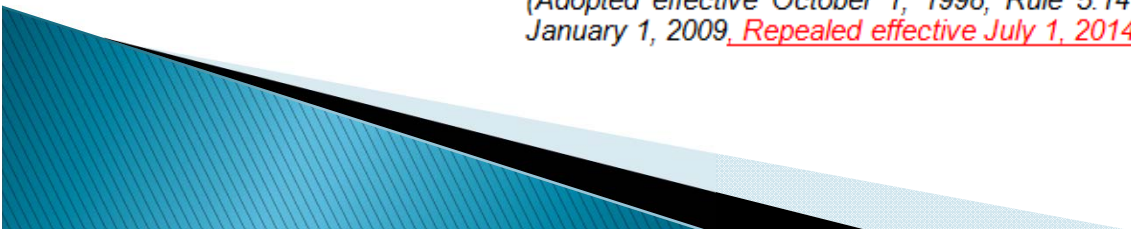
CHAPTER 5 – CONSERVATORSHIPS AND GUARDIANSHIPS

5.19 INVENTORY AND APPRAISAL

- ~~A. An "Inventory and Appraisal" shall be filed within 120 days from the hearing appointing the conservator in all cases where there is a conservatorship of the estate, even where there are no assets. When the value of the individual items to be listed is small, such items may be listed in broad categories, such as Clothing, Tools, Furniture, etc. However, items unique in nature or of substantial value must be itemized and appraised separately. In addition, all securities must be itemized and appraised separately. It is not acceptable merely to indicate the value of a brokerage or similar account.~~
- ~~B. After acquired or newly discovered property shall be inventoried and appraised pursuant to Probate Code section 2613, in a Supplemental "Inventory and Appraisal."~~

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(Adopted effective October 1, 1998; Rule 5.14 Renumbered as 5.19 and Amended effective January 1, 2009, Repealed effective July 1, 2014)



Repeal

CHAPTER 5 – CONSERVATORSHIPS AND GUARDIANSHIPS

5.20 SUBSTITUTED JUDGMENT (Probate Code section 2580)

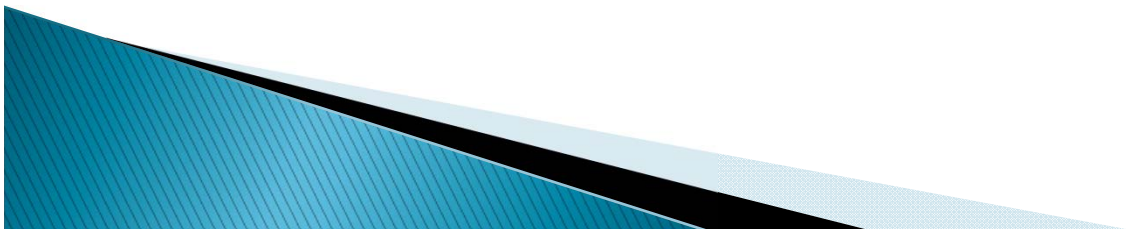
~~A. Prior Court approval is required for any action specified in Probate Code sections 2580 or 2423, such as making gifts or establishing, amending or funding a trust.~~

~~B. A noticed hearing is ordinarily required, as specified in Probate Code sections 2581 and 1460, et seq.~~

~~C.A.~~ Petitions requesting authority to exercise substituted judgment will not be heard until after the permanent conservator is appointed and Letters have been issued. Additionally:

1. The "Inventory and Appraisal" shall be filed, unless the Court otherwise orders on the basis of a clear and convincing showing that an urgency exists; and
2. If the Court waives filing of a formal "Inventory and Appraisal", the petition shall nonetheless include a description of the character and estimated value of the property of the estate.

~~D.B.~~ Petitions requesting Substituted Judgment, which potentially have an affect on the conservatee's estate plan, should provide all known testamentary documents related to the petition, including, but not limited to:



Repeal

CHAPTER 5 – CONSERVATORSHIPS AND GUARDIANSHIPS

5.24 ACCOUNTING FORMAT ~~SUPPORTING SCHEDULES/PETITION FOR APPROVAL~~

~~The accounting format must comply with the requirements of Probate Code §§1061, 1062, and 1063.~~

*(Adopted effective October 1, 1998; Amended effective January 1, 2001; Rule 5.18;
Renumbered as 5.24 effective January 1, 2009. Repealed effective July 1, 2014)*

5.25 ACCOUNT - SUPPORTING DOCUMENTS REQUIRED

The following must be filed with each accounting:

A. The "Account" of a conservator of the estate who is also the conservator of the person must be accompanied by a "Confidential Status Report" (~~Probate Code section 2620.4~~ Local Rule 5.23(C)). If the conservator of the estate is not the conservator of the person, the conservator of the person must file the status report in conjunction with the accounting filed by the conservator of the estate. Failure to comply with this rule may result in suspension or removal.

~~B. "Notice of Hearing"~~

~~C.B. "Referral to Court Investigator" (Clerk's Form 212, rev. 2008 CI-123. See Court's website: www.monterey.courts.ca.gov) reflecting names, addresses and telephone numbers of conservatee, conservator, attorney for conservator, attorney for conservatee, and names, addresses and contact information for conservatee's relatives and/or friends.~~

~~D.C. "Order Appointing Court Investigator" executed directed to "Monterey County Court Investigator", unless ongoing authority has been provided for in the initial "Order Appointing Court Investigator".~~



Repeal

CHAPTER 5 – CONSERVATORSHIPS AND GUARDIANSHIPS

5.26 FINAL ACCOUNTS

- A. The "Final Account" shall be filed no later than ninety (90) days after termination of the conservatorship. (Date of death or date of order terminating the conservatorship.)
- B. The "Final Account" shall be accompanied by a petition requesting its approval, authority for disposition of the assets, and conservator's discharge upon the filing of receipts.
- C. If there is a request for waiver of Probate Code section 1851.5 assessments, a clear and concise reason shall be included in the petition.
- D. If a probate proceeding has already been initiated, the petition shall state the caption, case number, county where filed, and the name of the petitioning party.
- E. Notice of the hearing on a petition for settlement of the "Final Account" must be given to the personal representative, if any, of a deceased conservatee.
- ~~F. Bank statements and other such documents from mutual funds and brokerage accounts, etc. to support ending assets on hand, are now statutorily required.~~

(Adopted effective October 1, 1998; Amended effective July 1, 2001; Rule 5.20 Renumbered as 5.26 effective January 1, 2009. Amended effective July 1, 2014)



Repeal

CHAPTER 5 – CONSERVATORSHIPS AND GUARDIANSHIPS

5.28 SMALL ESTATES: PUBLIC BENEFITS (Probate Code section 2628)

~~A. If a conservatorship estate qualifies under Probate Code section 2628, the Court may grant an ex parte petition to dispense with the filing of an account.~~

~~B. The petition shall state:~~

~~1. The value of the estate at the beginning and end of the account period, exclusive of conservatee's residence. It is not sufficient to allege that the total net value, exclusive of the residence, is less than \$15,000. A copy of financial statements showing the ending balances shall be filed with the petition.~~

~~2. The amount and nature of the "public benefit payments". It is not sufficient to allege that monthly payments, exclusive of public benefit payments, were less than \$2,000.~~

~~3. A description of any other monthly income for each month of the accounting period, excluding wages and salaries of conservatee, demonstrating that the estate meets the requirements of Probate Code section 2628.~~

~~A. The petition shall be presented each time an "Account" would otherwise be due. This assures the Court that the estate continues to qualify. A "Status Report" as required by Probate Code section 2620.1 is also required. qualify Conservator shall also file:~~

~~1. A Confidential Status Report as required by Local Rule 5.23 (C) and;~~

~~2. A "Referral for Court Investigator-Conservatorship" (Form CI-123. See Court's website: www.monterey.courts.ca.gov)~~

~~C.~~

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~~D. Veteran's Benefits are not "public benefit payments".~~

~~E.B. The Order waiving an accounting must be served on the Court Investigator at least thirty (30) days prior to the hearing on the Court Review.~~

(Adopted effective October 1, 1998; Rule 5.22 Renumbered as 5.28 effective January 1, 2009; Amended effective January 1, 2011, Amended effective July 1, 2014)

Repeal

CHAPTER 5 – CONSERVATORSHIPS AND GUARDIANSHIPS

5.30 RESIGNATION OR REMOVAL; APPOINTMENT OF SUCCESSOR; FINAL ACCOUNT AND DISCHARGE

- A. Effective Date of Resignation. The conservator may resign at any time but the resignation is not effective and will not be approved until the appointment of a successor conservator. (Termination of a conservatorship does not require resignation of the conservator.)
- B. Contemporaneous Petition to Appoint Successor. A petition for resignation must be filed contemporaneously with a petition for appointment of a successor conservator, provided that the consent of the successor conservator is filed prior to or at the time of hearing.

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- ~~C. The petition for a successor conservator may be submitted on the same form approved by The Judicial Council of California for initial petitions, deleting those portions which are not applicable.~~
- ~~D. The Notice of Hearing shall be substantially the same as required on an initial petition, including all relatives designated in Probate Code section 1821(b), other governmental agencies where appropriate, and the Court Investigator. Probate Code section 2683.)~~
- ~~E. Attendance. Conservatee is not required to attend the hearing for appointment of successor conservator. If the conservatee will not attend the hearing, the Court Investigator must personally visit the conservatee and file a written report to the Court at least five (5) days prior to the hearing. (Probate Code section 2684.)~~

Repeal

CHAPTER 5 – CONSERVATORSHIPS AND GUARDIANSHIPS

5.31 ABSCONDING CONSERVATORS (Probate Code section 2632)

~~A. For the purpose of this section an "Absconding Conservator" shall include:~~

- ~~1. A conservator whose whereabouts are unknown, and who has not filed an "Account" that is due;~~
- ~~2. A conservator whose whereabouts are known, but who refuses to cooperate in presenting an account to the Court; and~~

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- ~~3. A conservator who has removed the conservatee and/or his assets from the state without prior Court authorization.~~
- ~~B. In the case of an absconding conservator, the Court may compel the attorney for the conservator or the attorney of record in the conservatorship proceeding to render an account to the extent that information or records are available to the attorney. The account need not be verified. (Probate Code section 2632)~~
- ~~C. An absconding conservator may be removed and surcharged an amount deemed appropriate by the Court. An action against the surety may be initiated, on the basis of the amount surcharged, by appointed counsel for the conservatee.~~

*(Adopted effective October 1, 1998; Rule 5.25 Renumbered as 5.31 effective January 1, 2009.
Repealed effective July 1, 2014)*

Repeal

CHAPTER 5 – CONSERVATORSHIPS AND GUARDIANSHIPS

5.32 TERMINATION OF CONSERVATORSHIP

~~A. A conservatorship is terminated by either:~~

- ~~1. The death of the conservatee (petition to terminate not necessary). The conservator must file a Notice of Death of the conservatee and serve a copy on the Court Investigator within 10 days of learning of the conservatee's death; or~~
- ~~2. By Court Order where the reason for establishing the conservatorship no longer exists. This must be established by an evidentiary showing. (Probate Code sections 1860-1863)~~

~~B. The filing of a certification of competency issued by the superintendent of a state hospital pursuant to Welfare and Institutions Code section 7357, or other provisions of law, does not of itself terminate a conservatorship.~~

~~C. The Court retains jurisdiction over the conservatorship to enforce orders, review the final account, and to grant discharge. (Probate Code section 2630)~~

(Adopted effective October 1, 1998; Amended effective July 1, 2004; Rule 5.26 Renumbered as 5.32 effective January 1, 2009; Repealed effective July 1, 2014)



Repeal

CHAPTER 5 – CONSERVATORSHIPS AND GUARDIANSHIPS

5.35 APPOINTMENT OF GENERAL GUARDIANS

A. ~~Petitions~~ for appointment of guardians ~~shall be accompanied by the following:~~
~~of minors are generally set for hearing. Bond and/or blocked accounts will be required for all~~
~~estate guardianships.~~

B. ~~Supporting Declarations.~~ The petition for appointment of guardian must be accompanied by:

1. ~~A "Referral for Court Investigator-Conservatorship: (Form CI-123. See Court website: www.monterey.courts.ca.gov)The Declaration Under Uniform Child Custody Jurisdiction Act, Judicial Council Form GC-212 "Confidential Guardian Screening Form"; and;~~
2. ~~A "Confidential Declaration Regarding Household Members" (Form CI-130. See Court website: www.monterey.courts.ca.gov) A Declaration setting forth the following:~~
 - a. ~~The reason for establishing the proposed guardianship;~~
 - b. ~~The relationship of the proposed ward to the proposed guardian, including the duration and character of the relationship and what responsibilities for care, if any, the proposed guardian has had regarding the proposed ward. (Probate Code section 1513(a)(3))~~
 - c. ~~The circumstances under which the proposed guardian acquired physical custody of the proposed ward, if the proposed guardian has physical custody of the proposed ward at the time the petition is filed. (Probate Code section 1513(a)(3))~~

~~d. Any developmental, emotional, psychological, or educational needs of the proposed ward that have been identified and the capability of the proposed guardian to meet these needs. (Probate Code section 1513(a)(2))~~

~~e. The anticipated duration of the proposed guardianship and the plans of both the natural parents and the proposed guardian for a stable and permanent home for the child. (Probate Code section 1513(a)(4))~~

~~f. The criminal history, if any, of the proposed guardian or a statement that the proposed guardian has no criminal history.~~

~~g. For each proposed guardian:~~

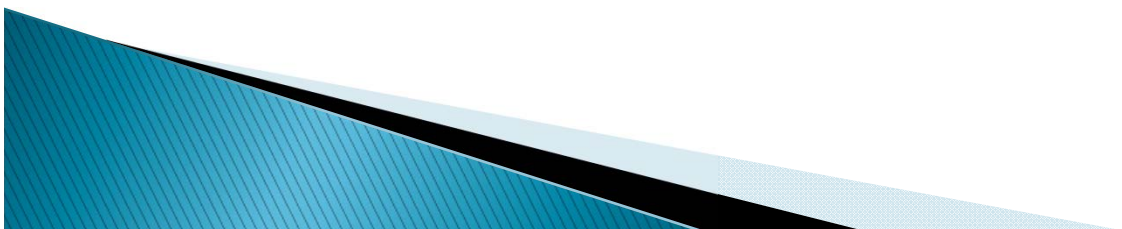
- ~~• Date of birth;~~
- ~~• Social security number;~~
- ~~• Maiden name, if applicable;~~
- ~~• Any aliases;~~
- ~~• Home and work telephone numbers.~~

~~h. The name, age, relationship and social security number of any person, living in the household who is sixteen (16) years of age or older must also be provided.~~

C. ~~Notice. Fifteen (15) days notice by personal service must be given to non petitioning parents, to the minor, if 12 years of age or older, and to the person or persons having custody. Fifteen (15) days notice by mail must be given to all second degree relatives.~~

~~See also Probate Code section 1461 and 1516 for other persons or entities that may require notice by mail.~~

~~In some cases notice may be dispensed with, as where waivers of notice and consents have been obtained from both of the minor's parents or from the minor, if 12 years of age or older. Notice may also be dispensed with upon a proper showing, where the Court determines it to be "in the interests of justice."~~



Repeal

CHAPTER 5 – CONSERVATORSHIPS AND GUARDIANSHIPS

5.36 DEFINITION OF CONSANGUINITY

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~~Probate Code section 1510(c)(3) requires relatives of the proposed ward within the second degree to be listed in the petition. Those relatives include: children, parents, grandchildren, grandparents, brothers and sisters. (NOTE: nephews, nieces, uncles, aunts, and great-grandparents are relatives of the third degree and are not entitled to notice under this section.)~~

~~(Adopted effective October 1, 1998; Rule 5.30 Renumbered as 5.36 effective January 1, 2009.
Repealed effective July 1, 2014)~~

5.37 APPOINTMENT OF TEMPORARY GUARDIANS

~~A. Petition. On or after filing a petition for appointment of a general guardian, any person entitled to petition may be appointed temporary guardian of the person or estate or both, in the discretion of the Court.~~

~~B. Notice. If the minor is 12 years of age or older, petitions for temporary letters will require five (5) days notice to the proposed ward. The Court may grant temporary letters, ex parte, where immediate need for letters can be shown, and the Court deems it to be in the best interests of the minor to waive notice requirements.~~

~~C. Bond. The Court will require temporary guardians of estates to post bond.~~

~~(Adopted effective October 1, 1998; Rule 5.31 Renumbered as 5.37 effective January 1, 2009.
Repealed effective July 1, 2014)~~

Repeal

CHAPTER 5 – CONSERVATORSHIPS AND GUARDIANSHIPS

5.39 APPRAISALS AND ACCOUNTS

~~The Probate Code provides that an "Inventory and Appraisal" shall be filed within ninety (90) days after appointment. (Probate Code section 2610(a))~~

~~A. Valuation.—The original appraisal in guardianship estates shall set forth the assets and values as of the date of appointment. Appraisals of after acquired property, by inheritance or gift, shall fix the value as of the date of acquisition. Assets purchased by the guardian are carried in the account at the cost of acquisition.~~

~~B. Periodic Payments.—If the ward receives Veterans, Social Security, Welfare, or other periodic benefits, the initial inventory must indicate the amount received each month.~~

~~C. Accounting.—A verified "Account" is required one (1) year after the date of appointment, not the date of issuance of Letters. Biennial "Accounts" will be required thereafter. "Accounts" must be filed no later than sixty (60) days following the end of the accounting period.~~

~~D. Form of Account.—See Local Rules 5.24 and 4.48~~

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~~E. Multiple Wards. When a guardian accounts for the assets of more than one minor, the accounting for each minor must be set forth individually.~~

(Adopted effective October 1, 1998; Amended effective January 1, 2001; Rule 5.33 Renumbered and Amended as 5.39 effective January 1, 2009, Amended effective July 1, 2014)

Amend

CHAPTER 5 – CONSERVATORSHIPS AND GUARDIANSHIPS

5.03 PETITION FOR APPOINTMENT OF PROBATE CONSERVATOR OF THE PERSON ONLY

A. For a Petition for Appointment of Probate Conservator of the Person only, Petitioner shall by Declaration indicate why a conservatorship of the estate is not necessary.

B. Where it is stated that a conservatorship of the estate is not necessary because the proposed conservatee has a trust:

1. Petitioner shall identify any and all trusts, including any and all amendments that may or may not have been revoked by the subsequent documents;
2. The proposed conservatee's interest in the trust;

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3. The name of the trustee and/or successor trustee;
4. An estimated value of the size of the trust;
5. An estimated value of any income the proposed conservatee may be entitled to, and;

Amend

CHAPTER 5 – CONSERVATORSHIPS AND GUARDIANSHIPS

5.07 REQUIRED DOCUMENTS

The following documents are required to be filed with the petition for appointment of conservator, regardless of whether proposed conservatee is the petitioner or will attend the hearing:

- A. ~~Where appointment of counsel is required under Probate Code section 1471(a), an ex parte order for appointment of counsel should be submitted when the petition is filed to avoid continuance or delay.~~ The supplemental information described in 5.03(b), above and Judicial Council Form GC-312 "Confidential Conservator Screening Form."
- B. ~~Notice of Hearing (issued by Clerk's Office). Citation, to be issued by Clerk's Office, except where the proposed conservatee is the petitioner.~~ Referral for Court Investigator Conservatorship" (See Court website: www.montereycourts.ca.gov)
- C. ~~"Referral for Court Investigator Conservatorship"~~ (See Court website: www.montereycourts.ca.gov) reflecting confidential information, present location of conservatee, telephone number, names of conservators, attorney of record, addresses, telephone number, and relationship of all the parties, relatives, friends, and neighbors.
- D. ~~If conservatee is medically unable to attend the hearing, a declaration from a licensed medical practitioner is required. Emotional or psychological instability is generally not sufficient cause. (Probate Code sections 1825(b) and (c)).~~
- E. ~~If the proposed conservatee is found unable to attend the hearing after filing of the petition, petitioner shall promptly file a Capacity Declaration from a licensed medical practitioner and provide a copy to the Court Investigator.~~

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- F. C. Order Appointing Court Investigator directed to: "Monterey County Court Investigator". The appropriate boxes on the order should be designated to provide the Court Investigator ongoing authority for future reviews.

Amend

CHAPTER 5 – CONSERVATORSHIPS AND GUARDIANSHIPS

~~5.08 THE PETITION FOR PERMANENT CONSERVATORSHIP~~

~~A. There shall be a separate proceeding for each person for whom conservatorship is sought, and each petition shall provide the proposed conservatee's Social Security number.~~

~~B. Independent powers may not be requested except upon a noticed hearing, either as part of the initial petition or in a subsequently filed petition. (Probate Code sections 2592(c), 1460, et seq.) If Independent Powers under sections 2590 and 2591 are requested, an attachment to the petition shall specify the powers requested, and must state the reasons requiring the powers requested. Only those powers necessary and proper shall be granted.~~

~~Proposed restrictions or limitations on the Independent Powers must also be included. The Court will not grant Independent Powers to sell real property or to borrow money with real property as security, unless the bond includes the value of the real property and there are sufficient restrictions to guarantee conservatee's rights regarding the sale of a residence or former residence as contained in Probate Code section 2540(b).~~

~~G.A.~~ When a petition is granted, the petitioner shall file the following documents prior to the issuance of Letters of Conservatorship;

~~H. The Order Appointing Conservator (Judicial Counsel Form) and attachments;~~

1. The Order Appointing Conservator (Judicial Counsel Form) and attachments;

Amend

CHAPTER 5 – CONSERVATORSHIPS AND GUARDIANSHIPS

5.12 TEMPORARY CONSERVATORSHIPS

~~A.— A petition for temporary conservatorship shall not be granted unless a petition for permanent conservatorship is on file and noticed for hearing.~~

~~B.—~~ A. Where a Petition for Appointment of Temporary Conservator is filed, the Court's Investigator's Office shall be personally served at least five (5) days before the scheduled hearing.

~~E.—~~ B. Extraordinary powers for authority to give or withhold consent for medical treatment pursuant to either Probate Code sections 2355 or 2357 shall not be granted except upon a noticed hearing. ~~Conservatee must attend the hearing unless unwilling or unable. If the Conservatee will not attend, a personal interview and report by the Court Investigator pursuant to Probate Code sections 1892-1894 is required.~~

~~F.— A temporary conservator may not fix a temporary conservatee's residence at a place different from where he/she resided prior to the commencement of the proceedings without a noticed hearing (Probate Code section 2253), except in the case of an emergency and pursuant to Probate Code section 2254. The proposed conservatee must attend the hearing, or the Court Investigator shall personally interview the proposed conservatee and report to the Court. Procedures required by Probate Code section 2253 shall be strictly followed.~~

~~G.— A temporary conservator shall not sell or relinquish any lease or estate in real or personal property used as or within the conservatee's place of residence without a noticed hearing and specific approval of the Court. (Probate Code section 2252(e).)~~

~~H.— Attorney and conservator fees are not payable under a temporary conservatorship, unless Probate Code section 2640 is satisfied.~~

~~I.— An "Inventory and Appraisal" and an account must be filed within ninety (90) days after appointment of the temporary conservator, not the issuance of Letters. However, if the temporary conservator is appointed permanent conservator, the accounting for the period of temporary conservatorship may be included in the first annual account. (Probate Code sections 2255 and 2256.)~~

~~J.—~~ C. Temporary Letters of Conservatorship must state a date certain of expiration. This date shall not go beyond the date of the hearing on the permanent conservatorship. If a continuance is requested and allowed, new Letters will be issued upon request and shall expire on the continued date of the hearing.

Amend

CHAPTER 5 – CONSERVATORSHIPS AND GUARDIANSHIPS

5.15 BOND

~~At the time of appointment of a Conservator of the Estate, the Court must fix a bond. If the conservatee is the petitioner and has waived the requirement of a bond, the Court has the power to appoint the conservator without bond. It is the general policy, however, that a bond will be required if an individual is appointed. The Court will generally not waive the bond or set it in an amount less than is customary unless the conservatee is present at the hearing and is found competent to waive bond.~~

~~A. Unless for good cause the Court orders otherwise, the amount of the bond shall include the total value of the personal property plus the total annual income, plus the recovery amount pursuant to Probate Code section 2320(e)(4).~~

~~1. Annual income includes that derived from real and personal property.~~

~~2. If the conservatee is a beneficiary under a trust which requires all or a fixed portion of the income of the trust to be distributed to the conservatee, the bond must include that income. However, if the trust provides that the trustee merely applies trust income for the conservatee's needs of care and maintenance, etc., and provides for excess income to be held in the trust and accrued to principal, a bond need not include the trust income.~~

~~B-A. If Independent Powers (Probate Code sections 2590 and 2591) are granted to include the sale of real property (Probate Code section 2591(d)), or to encumber real property as security for a loan, (Probate Code section 2591(f)), the bond shall include the value of the real property.~~

~~1. If sufficient restrictions, limitations or conditions to adequately safeguard and secure the real property are included in the order granting the Independent Powers, bond need not include the value of the real property.~~

~~2. Where the Independent Power to sell real property is limited by requiring Court approval or confirmation, said confirmation shall follow the procedure required as if no Independent Power had been granted. Confirmation proceedings may be dispensed with upon the filing of an appropriate bond and compliance with Probate Code section 2540(b). Dispensing with the confirmation of sale does not imply Court approval. The Court retains the authority to review the sale at the time of the next account and Court review.~~

~~3. If real property is sold pursuant to Probate Code section 2591(d), the sale price may not be less than 90% of the appraised value determined by the Probate Referee within one (1) year prior to sale, unless otherwise authorized by the Court.~~

~~C. With specific prior Court approval, bond may be reduced by the amount of estate assets deposited in an institution described in Probate Code section 2328, if appropriate receipts~~

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~~are filed with the Court verifying that such assets shall not be released without Court authorization. Receipts shall be signed by an officer of the institution.~~

~~Letters of conservatorship shall not issue until the receipts are filed with the Court. Otherwise, a bond will be required for the full amount, to be reduced upon the subsequent filing of appropriate receipts.~~

~~D. A family relationship between the conservator and conservatee, in itself, is not sufficient cause to reduce or eliminate the bond requirement.~~

~~E. If upon the filing of the "Inventory and Appraisal", or at any time when counsel for the conservator concludes that the bond is not sufficient, the conservator shall cause a sufficient bond to be filed or shall petition the Court to approve the existing bond upon the filing of appropriate receipts pursuant to Probate Code sections 2328 or 2456.~~

(Adopted effective October 1, 1998; Amended effective July 1, 2001; Amended effective January 1, 2008; Rule 5.10 Renumbered as 5.15 and Amended effective January 1, 2009. Amended effective July 1, 2014)

Amend

CHAPTER 5 – CONSERVATORSHIPS AND GUARDIANSHIPS

5.17 CONSERVATEE'S RESIDENCE-CONSERVATEE'S REAL PROPERTY

A. When authorization is granted it shall be for a period of time not to exceed four (4) months. The Order shall provide for immediate return of the conservatee to the State of California at the end of the authorized time period. The Court will extend the four (4) month time period only upon a satisfactory showing that an equivalent proceeding has been initiated in the other state. The period of any extension granted by the Court will only be sufficient to allow the equivalent proceeding to be finalized. The Court retains jurisdiction until the equivalent proceeding is finalized and a Certified Copy of the Court's Order from the new state of residence is filed.

~~A. If the Court determines it appropriate and necessary, based upon information contained in the Court Investigator's report or obtained from any other source, the Court may order that a conservatee's residence not be changed without prior Court authorization.~~

B. Where authorization has been granted for temporary residence outside the State of California, the conservator shall return the conservatee to this state for the personal visit by the Court Investigator at the time a "Court Review" is required.

~~B. A sale of conservatee's residence or former residence must comply with Probate Code section 2540(b) and 2543(b). The Independent Power to sell a residence or former~~

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~~residence will not be granted. Compliance with Probate Code section 2540(b) is required in all instances. See also Local Rule 4.38~~

C. The Court Investigator is not authorized to conduct any Court investigation or review through a third person out of state.

~~C. In no case is the conservator of the person authorized to fix conservatee's residence out of state without prior Court approval.~~

~~4. When authorization is granted it shall be for a period of time not to exceed four (4) months. The Order shall provide for immediate return of the conservatee to the State of California at the end of the authorized time period. The Court will extend the four (4) month time period only upon a satisfactory showing that an equivalent proceeding has been initiated in the other state. The period of any extension granted by the Court will only be sufficient to allow the equivalent proceeding to be finalized. The Court retains jurisdiction until the equivalent proceeding is finalized and a Certified Copy of the Court's Order from the new state of residence is filed.~~

~~2.1. Where authorization has been granted for temporary residence outside the State of California, the conservator shall return the conservatee to this state for the personal visit by the Court Investigator at the time a "Court Review" is required.~~

~~3.1. The Court Investigator is not authorized to conduct any Court investigation or review through a third person out of state.~~

~~D. A Court Review is not required where there is a conservatorship of the estate only, and the conservatee resides out of state and is not present in this state. (Probate Code section 1850(d)(2)). Timely accountings are still required. (See Local Rule 5.23 et seq.)~~

~~E. A "Referral for Court Investigator Conservatorship" (See Court website: www.monterey-courts.ca.gov) shall be filed:~~

~~1. With the initial petition;~~

~~2. Each time either the conservatee or conservator has a change of address; and,~~

~~3. With each accounting, or petition to dispense with an accounting pursuant to Probate Code section 2628, after receipt of the "Notice of Court Review."~~

~~F. Sales of conservatee's real property must also comply with 2540, 2543, and Local Rule 4.38~~

~~(Adopted effective October 1, 1998; Amended effective January 1, 2002; Amended effective July 1, 2004; Amended effective January 1, 2008; Rule 5.13 Renumbered as 5.17 and Amended effective January 1, 2009, Amended effective July 1, 2014)~~

5.18 PLACEMENT ASSESSMENT/EVALUATION

Amend

CHAPTER 5 – CONSERVATORSHIPS AND GUARDIANSHIPS

5.20 SUBSTITUTED JUDGMENT (Probate Code section 2580)

~~A. Prior Court approval is required for any action specified in Probate Code sections 2580 or 2423, such as making gifts or establishing, amending or funding a trust.~~

~~B. A noticed hearing is ordinarily required, as specified in Probate Code sections 2581 and 1460, et seq.~~

~~C.A.~~ Petitions requesting authority to exercise substituted judgment will not be heard until after the permanent conservator is appointed and Letters have been issued. Additionally:

1. The "Inventory and Appraisal" shall be filed, unless the Court otherwise orders on the basis of a clear and convincing showing that an urgency exists; and
2. If the Court waives filing of a formal "Inventory and Appraisal", the petition shall nonetheless include a description of the character and estimated value of the property of the estate.

~~D.B.~~ Petitions requesting Substituted Judgment, which potentially have an affect on the conservatee's estate plan, should provide all known testamentary documents related to the petition, including, but not limited to:

- Existing trust agreement;
- Proposed trust agreement or proposed amendment;
- Last will and testament of conservatee;
- If no will, a specific description of how and to whom property would pass by intestacy; and
- A statement of the nature and amount of existing claims of creditors' against the conservatorship estate.

Confidential documents may be sealed and may be viewed by the judge in chambers to maintain confidentiality.

~~E.C.~~ Upon the creation of a trust pursuant to a petition to exercise substituted judgment, the conservatorship of the estate shall continue in effect. The conservator will continue to supervise the trustee and enforce the trustee's fiduciary duties where necessary. Accountings will continue to be required as they would have if the trust had not been established. Nothing in this rule affects a trust already in existence before the conservatorship was established.

~~F.D.~~ Regardless of any other provision of the trust to the contrary, during the settler's lifetime the trustee shall be subject to the same duties and limitations as a conservator of the estate under the laws of the State of California, as to the following matters:

1. Posting bond

Amend

CHAPTER 5 – CONSERVATORSHIPS AND GUARDIANSHIPS

5.21 NOTICE OF CHANGE OF ADDRESS

Conservators and guardians shall file with the Court and serve upon the Court Investigator:

1. ~~W~~ritten notice of any change of their address, or the address of their conservatees, within thirty (30) days of the change of address; and-
2. –“Referral for Court Investigator-Conservatorship” (Form CI-123), See Court website: www.monterey.courts.ca.gov). Failure to comply may result in suspension or removal.

(Adopted effective October 1, 1998; Rule 5.16 Renumbered as 5.21 effective January 1, 2009, Amended effective July 1, 2014)

Amend

CHAPTER 5 – CONSERVATORSHIPS AND GUARDIANSHIPS

5.23 ACCOUNTS AND ACCOUNTING

COURT REVIEWS, ACCOUNTS AND STATUS REPORTS

~~A. A court review, as described in Probate Code section 1850 and 1851, is required one (1) year after appointment, not date of issuance of Letters, and annually thereafter. However, if the Court determines at the initial review or any subsequent review that the conservator is acting in the best interests of the conservatee, the Court may require a court review biennially from the anniversary date of appointment.~~

~~Conservator's "Account" and "Status Report" shall be filed in conjunction with each "Court Review".~~

~~B. A. Conservator's "Account" and "Status Report" shall be filed in conjunction with each "Court Review".~~

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~~G. B. All Conservators who have not obtained a copy of the "Handbook for Conservators" or who have not viewed the video "With Heart - Understanding Conservatorship", must do so prior to the time of the Court Review. The accounting will not be approved by the Court until this requirement has been complied with.~~

~~D. C. A "Confidential Status Report," as formerly required by Probate Code section 2620.1, shall be filed by the conservator at each Court Review. The "Confidential Status Report" shall be a separate document from the petition and account and shall be confidential. This document is required of a conservator and is also required with any petition to waive the account.~~

The "Confidential Status Report" shall address the current physical/medical condition of the conservatee; the current level of care; any anticipated changes in residence and/or level of care; and reason(s) for change; any involvement of family and friends of the conservatee; and any unusual circumstances related to conservatee and/or conservatorship of the estate. (Amended effective January 1, 2007.)

~~E. D. The supporting documentation required by Probate Code Section 2620 shall be "lodged" with the Court pending approval of the Conservator/Guardian's accounting. Lodged documents shall be submitted with a Financial Documents Caption Sheet (Clerk's Form FIN-CAP (New January 2014) CI-126. See Court website: www.montereycourts.ca.gov) and a pre-addressed, postage paid envelope for return of the lodged documents. Upon approval of the accounting, the lodged documents shall be returned to the submitting party and retained by the attorney for the Conservator/Guardian, until the Conservator/Guardian has been discharged. In cases where the Conservator/ Guardian is acting in propria persona, the Conservator/Guardian's supporting documentation shall be filed and retained in the Court's~~

~~F. E. Each "Account," whether filed annually or biennially shall cover the period ending on the anniversary date of appointment of the permanent conservator or successor. The anniversary date shall be the date of the hearing appointing conservator.~~

1. The Petition and "Account" shall be filed no later than sixty (60) days after the anniversary date and shall be noticed for hearing forty-five (45) days after its filing in a year when a Court Review is due and at least fifteen (15) days after filing in a year when no Court Review is due.

~~2. The Court Investigator is required to personally visit the conservatee, review the "Account" and "Status Report", and file a written report fifteen (15) days prior to the hearing. (Probate Code section 1851.)~~

~~G. F. In years when a Court Review is required, a "Notice of Court Review" will be filed by the Court Investigator—Investigation Unit and copies shall be served by mail on conservator(s), attorney for conservator(s) and attorney for conservatee.~~

1. The "Notice of Court Review" shall be filed and mailed thirty (30) days prior to the anniversary date of appointment of conservator, or successor conservator;

2. The "Notice of Court Review" will require the upcoming "Account" and "Status Report" to cover the period through, and end on, the anniversary date of appointment;

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3. The "Notice of Court Review" shall state the date by which the "Account" and "Status Report" must be filed, which shall be no later than sixty (60) days following the anniversary date;

4. The "Notice of Court Review" shall state the date of hearing on the petition for approval of "Account" and "Court Review"; and

5. If the "Account" and "Status Report" are not filed and no appearance is made at the hearing noticed for "Court Review", the Court shall issue an Order to Show Cause citing the Conservator(s) and Conservator(s)' attorney.

~~H. Findings of the Court Investigator pursuant to Probate Code section 1851, shall be submitted to the Court in writing not less than 15 days prior to the hearing on the "Court Review" and "Account". The Court Investigator is required to personally visit the conservatee, review the "Account" and "Status Report" and file a written report fifteen (15) days prior to the hearing. (Probate Code section 1851) A copy of the report shall also be mailed by the Court Investigator to the conservator(s) and to the attorney of record for the conservator and conservatee. This report and its contents shall be kept confidential.~~

Amend

CHAPTER 5 – CONSERVATORSHIPS AND GUARDIANSHIPS

5.25 ACCOUNT - SUPPORTING DOCUMENTS REQUIRED

The following must be filed with each accounting:

A. The "Account" of a conservator of the estate who is also the conservator of the person must be accompanied by a "Confidential Status Report" (~~Probate Code section 2620.4~~ Local Rule 5.23(C)). If the conservator of the estate is not the conservator of the person, the conservator of the person must file the status report in conjunction with the accounting filed by the conservator of the estate. Failure to comply with this rule may result in suspension or removal.

~~B. "Notice of Hearing"~~

~~G-B. "Referral to Court Investigator" (Clerk's Form 212, rev. 2008CI-123. See Court's website: www.monterey.courts.ca.gov) reflecting names, addresses and telephone numbers of conservatee, conservator, attorney for conservator, attorney for conservatee, and names, addresses and contact information for conservatee's relatives and/or friends.~~

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~~D-C. "Order Appointing Court Investigator"~~ executed-directed to "Monterey County Court Investigator", unless ongoing authority has been provided for in the initial "Order Appointing Court Investigator".

(Adopted effective October 1, 1998; Rule 5.19 Renumbered as 5.25 effective January 1, 2009; Amended effective January 1, 2011, Amended effective July 1, 2014)

Amend

CHAPTER 5 – CONSERVATORSHIPS AND GUARDIANSHIPS

5.28 SMALL ESTATES: PUBLIC BENEFITS (Probate Code section 2628)

~~A. If a conservatorship estate qualifies under Probate Code section 2628, the Court may grant an ex parte petition to dispense with the filing of an account.~~

~~B. The petition shall state:~~

~~1. The value of the estate at the beginning and end of the account period, exclusive of conservatee's residence. It is not sufficient to allege that the total net value, exclusive of the residence, is less than \$15,000. A copy of financial statements showing the ending balances shall be filed with the petition.~~

~~2. The amount and nature of the "public benefit payments". It is not sufficient to allege that monthly payments, exclusive of public benefit payments, were less than \$2,000.~~

~~3. A description of any other monthly income for each month of the accounting period, excluding wages and salaries of conservatee, demonstrating that the estate meets the requirements of Probate Code section 2628.~~

~~A. The petition shall be presented each time an "Account" would otherwise be due. This assures the Court that the estate continues to qualify. A "Status Report" as required by Probate Code section 2620.1 is also required. qualify Conservator shall also file.~~

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1. A Confidential Status Report as required by Local Rule 5.23 (C) and;

2. A "Referral for Court Investigator-Conservatorship" (Form CI-123. See Court's website: www.monterey.courts.ca.gov)

~~C.~~

~~D. Veteran's Benefits are not "public benefit payments".~~

~~E.B. The Order waiving an accounting must be served on the Court Investigator at least thirty (30) days prior to the hearing on the Court Review.~~

(Adopted effective October 1, 1998; Rule 5.22 Renumbered as 5.28 effective January 1, 2009; Amended effective January 1, 2011, Amended effective July 1, 2014)

Amend

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5.30 RESIGNATION OR REMOVAL; APPOINTMENT OF SUCCESSOR; FINAL ACCOUNT AND DISCHARGE

- ~~C.~~ Final Account. A final account of the resigning conservator and/or a petition for fees upon resignation cannot be approved until a successor is appointed and is served with notice of hearing and a copy of the account and/or petition.
- ~~D.~~ A successor conservator's "First Account", as in the case of a predecessor, shall be presented to the Court one (1) year after appointment ~~in the same manner as required in Local Rules 5.24 and 5.25.~~
- ~~E.~~ At the hearing for appointment of successor conservator, the same procedural requirements apply as for the initial appointment of conservator. (See Local Rule 5.03 and 5.07 and take particular note of 5.07 (g).
- ~~F.~~ The successor conservator of the estate shall not account for the period prior to his/her appointment, except as provided in Probate Code section 2632, and the predecessor shall not be discharged until all of the following are accomplished:
1. Approval of predecessor's Final Account including the period up to the appointment of the successor and delivery of assets;
 2. The filing of a receipt, executed by the successor conservator, acknowledging delivery and receipt of the assets as reflected in the "Assets on Hand" in the Final Account; and

Amend

CHAPTER 5 – CONSERVATORSHIPS AND GUARDIANSHIPS

GUARDIANSHIPS

5.35 APPOINTMENT OF GENERAL GUARDIANS

- A. Petition. ~~Petitions~~ for appointment of guardians shall be accompanied by the following: of minors are generally set for hearing. Bond and/or blocked accounts will be required for all estate guardianships.

~~D.~~ Single Application for Multiple Wards. The Court will consider a single application for appointment of the same guardian of the person or estate or both of more than one minor, if the minors are siblings. In all other instances separate applications must be filed. (Adopted effective October 1, 1998; Amended effective July 1, 2001; Rule 5.29 Renumbered as 5.35 effective January 1, 2009)

~~B.~~
~~E-C.~~ The fee for the Court Investigator must be paid at the time the Petition for Appointment of Guardian or Petition for Termination of Guardianship is filed. If the Petitioner believes the fees should be deferred or waived due to hardship, the Petitioner shall file a request for deferral or waiver of the fee and shall set forth facts sufficient to establish a hardship. (Adopted effective October 1, 1998; Amended effective July 1, 2001; Rule 5.29 Renumbered as 5.35 effective January 1, 2009; Amended effective January 1, 2010, Amended effective July 1, 2014)

Amend

CHAPTER 5 – CONSERVATORSHIPS AND GUARDIANSHIPS

5.40 ANNUAL REVIEW OF GUARDIANSHIPS

Each guardian shall file with the Court a completed Confidential Guardianship Status Report (GC-251) one year after the anniversary date of appointment of the Guardianship. The status report shall include a current note from the doctor and dentist, as well as a current report card and school attendance record for each minor. A hearing on the status report shall be set one (1) month after the anniversary date of appointment, and annually thereafter.

(Adopted effective January 1, 2009, Amended effective July 1, 2014)

Amend

CHAPTER 5 – CONSERVATORSHIPS AND GUARDIANSHIPS

MINOR OR INCOMPETENT'S CLAIM

5.42 PROCEEDING TO COMPROMISE MINOR'S OR INCOMPETENT'S CLAIM (Probate Code sections 3500 - 3612)

- A. Petition. A petition to compromise the claim of a minor or incompetent must be filed as a civil proceeding, not a probate proceeding. The petition must set forth jurisdictional facts and state the amount to be paid, by whom, and what disbursement for costs and/or fees is requested. The petition must also request the deposit of the balance of the proceeds in a blocked account in a federally insured bank, credit union or savings and loan association in the manner provided by law, with receipts filed. Although filed ~~as~~ the a Civil proceeding, hearing shall be held in the Probate department.
- B. Order. The order shall provide for the person or entity holding funds to make a check payable to the person or persons entitled to costs and fees and shall provide for the issuance of a check for the remaining funds made payable to the proposed trustee AND the bank, credit union or savings and loan association.
- C. Duty of Attorney. The attorney for the petitioner is responsible for assuring that the funds are deposited in accordance with the order and receipts filed.

1. The Receipt and Acknowledgment for Deposit into Blocked Account shall be signed by a manager or assistant manager and filed with a business card.

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2. The Court will set a hearing for Proof of Deposit into Blocked Account or Proof of Purchase Annuity.

(Adopted effective October 1, 1998; Amended effective January 1, 2004; Amended effective January 1, 2007; Rule 5.35 Renumbered to 5.42 and Amended effective January 1, 2009; Amended, effective January 1, 2011, Amended effective July 1, 2014)

Amend

CHAPTER 7– LAW AND MOTION

7.11 EX PARTE APPLICATIONS

Except as otherwise specifically provided by these rules, requests for ex parte relief in civil cases shall be presented in conformance with California Rules of Court Sections 3.1200 through 3.1207 and directed to the attention of the Supervising Judge, Civil Division.

~~When the required written documents for ex parte relief set forth in Rule 3.1201 have been filed with the court AND delivered to all opposing parties (OR delivery has been excused for exceptional circumstances), the "presentation" of the ex parte application within the meaning of Rule 3.1204(a)(1) shall be deemed complete. When the required written documents for ex parte relief set forth in Rule 3.1201 have been filed with the court BUT delivery of the written documents has not occurred and has not been excused, the "presentation" of the ex parte application within the meaning of Rule 3.1204(a)(1) shall be deemed incomplete.~~

~~Completed presentations of ex parte applications shall be set for personal appearance within the time frames of Rule 3.1203. Incomplete presentations of ex parte applications shall be presented to the appropriate judicial officer for consideration for setting of appearance pursuant to Rule 3.1205.~~

~~Ex Parte appearances are calendared on Wednesdays at 1:30 p.m., except when exceptional circumstances are presented in the application for an appearance on a different day and/or time. If upon review of the application the judicial officer finds those exceptional circumstances exist, the Court will inform the applicant and may adjust the hearing date and/or time, requiring the applicant to re-notice all the parties.~~

~~In addition to compliance with California Rules of Court 3.1200-3.1207, the application and all supporting papers shall be filed with the Court by 11 a.m. on the court day preceding the hearing date. Copies of any responding papers should be submitted prior to the hearing, if possible. Late-submitted moving papers will be accepted for filing and presented to the appropriate judicial officer pursuant to California Rules of Court 3.1205. However, parties are advised that the late submittal of ex parte application and supporting documentation may cause the hearing and / or decision thereon to be delayed.~~

An ex parte application will be considered without a personal appearance in the cases set forth in CRC section 3.1207 and in those cases where the parties have stipulated that the ex parte application and any opposition may be determined without a personal appearance.

(Adopted effective January 1, 2004; Amended effective January 1, 2005; Amended effective July 1, 2010; Amended effective January 1, 2011, Amended effective July 1, 2014)

Amend

CHAPTER 9– APPELLATE DIVISION

APPELLATE ~~DIVISION~~DEPARTMENT

9.01 JURISDICTION

The Appellate ~~Division~~department of the Superior Court of California, County of Monterey, has jurisdiction over all appeals ~~and writs and writs (excluding habeas corpus) concerning~~ ~~infraction, misdemeanor and limited civil (not small claims) cases (excluding small claims) arising out of Courts in Monterey County. The Appellate Division also has jurisdiction over writs of mandamus and prohibition in felony matters still pending before the magistrate.~~

General rules applicable to Appellate ~~Division~~department proceedings are set forth in the California Rules of Court, Rule 8.800, et seq.

(Adopted effective October 1, 1998; Amended effective July 1, 2003, Amended effective January 1, 2006; Amended effective January 1, 2010)

9.02 JUDICIAL ASSIGNMENT AND SESSIONS

The Presiding Appellate Judge shall supervise the business of the Appellate Divisiondepartment. All motions, including ex parte applications for orders, shall be presented to the Presiding Appellate Judge. The Presiding Appellate Judge may act on routine matters, or may schedule a motion or other matter for hearing ~~before the panel~~ at his or her discretion.

The panel is composed of three judges, including the Presiding Appellate Judge. The Chief Justice may appoint a ~~Alternate panel members fourth pursuant to section 77, subdivision (a), of the Code of Civil Procedure. judge is assigned as an alternate appellate panel member.~~

All ~~Traffic~~ ~~infraction~~ appeals shall be ~~(1) set for hearing on the every first fourth Thursday of every month unless otherwise specified. T~~ and (2) heard and decided by the Presiding Appellate Judge, or his or her designee from the appellate panel, shall hear and decide the traffic appeals.

The appellate panel shall hear and decide the ~~Limited civil and misdemeanor appeals shall be (1) set for hearing every first Thursday and (2) heard and decided by the appellate panel.~~

(Adopted effective October 1, 1998; Amended effective January 1, 2006; Amended effective January 1, 2010; Amended effective January 1, 2011, Amended effective July 1, 2013)

Amend

CHAPTER 10 – FAMILY LAW DEPARTMENT

10.10 MISCELLANEOUS RULES

A. DUPLICATE FILING

Copies of previously filed pleadings or declarations should not be attached as exhibits to subsequent documents. Reference to the previous documents is sufficient.

(Previously Rule 10.08, B, Adopted effective July 1, 2000; Relettered as 10.08 A effective January 1, 2009, Amended effective July 1, 2013)

B. CONFIDENTIAL RECORDS

It is the responsibility of the filing party to identify any documents that ~~may be~~ are considered confidential and to ~~seal~~ secure such documents when filed with the Court. Such documents may include ~~tax returns~~, medical reports, psychological records, custody investigation reports, and police reports. HIV laboratory test results shall not be made public. This rule pertains to any documents that are attached to a pleading and filed with the Court. If such attachments are not submitted as ~~sealed in a secured envelope pursuant to Local Rule 10.10 (F)~~, the Clerk of the Court will not act to ~~seal~~ secure the documents. Unless ~~sealed-submitted in a secured envelope~~ by the filing party, the documents will be considered as open and public, upon filing with the Clerk. Refer to Local Rule ~~10.09-F10 (F)~~, ~~Sealed Documents listed below~~, for instruction in filing securing confidential documents.

C. PLEADING FOR ADVERSE PARTY

Amend

CHAPTER 10 – FAMILY LAW DEPARTMENT

10.10 MISCELLANEOUS RULES

| F. ~~SEALED~~ INSTRUCTIONS IN SECURING CONFIDENTIAL DOCUMENTS

Any confidential documents shall be submitted for filing in a clasped envelope not smaller than 7 inches by 10 inches nor larger than 8 1/2 inches by 11 inches in size. The envelope shall be attached to the accompanying document with the clasp facing up and at the bottom of the document to allow access for the court through the clasped end. A label shall be affixed to the envelope showing the case name, number and identity of the documents enclosed. *(Adopted effective October 1, 1998; Amended effective July 1, 1999; Amended effective July 1, 2000; Amended effective July 1, 2001; Amended effective January 1, 2002; Amended effective January 1, 2007; Amended effective January 1, 2010)*

Amend

CHAPTER 15 – WRITS

CHAPTER 15

WRITS

15.01 HABEAS CORPUS

Petitions for writs of habeas corpus shall be filed in accordance with the California- Rules of Court, rule 4.550 et seq. and Penal Code section 1473 et seq.

Petitions for writs of habeas corpus shall be addressed to the designated criminal writ judge.

Petitions for writs of habeas corpus will be assigned a unique case number unless otherwise directed by the court.

Requests to set habeas corpus petitions on calendar for matters other than an evidentiary hearing under California- Rules of Court, rule 4.551(f) shall be addressed to the designated criminal writ judge.

(Rule 15.01 previously Adopted effective October 1, 1998; Repealed effective January 1, 2009, New Rule 15.01 Adopted effective January 1, 2009, Amended July 1, 2014)

15.02 EXTRAORDINARY WRITS FROM THE COURT

All petitions for writs of mandamus, prohibition, and certiorari that are subject to the original jurisdiction of the Appellate Division (i.e., infraction, misdemeanor, or limited civil cases) shall be addressed to the Presiding Appellate Judge.

~~Petitions for writs of coram nobis, mandamus or prohibition in~~Other than habeas corpus, all petitions for extraordinary writs (e.g., coram nobis, mandamus, prohibition, etc.) related to a criminal proceeding ~~must that falls within the original jurisdiction of the Superior Court shall be presented addressed to the Presiding Judge, except petitions for writs coram vobis, mandamus, prohibition, review (certiorari) or supersedeas arising from any misdemeanor case, infraction case, or limited civil action, which shall be addressed to the Presiding Appellate Judge.~~

Other than habeas, all petitions for extraordinary writs not related to a felony matter and not falling within the original jurisdiction of the Appellate Division shall be addressed to the Supervising Civil Judge.

~~▲~~ *(Rule 15.03 Renumbered as 15.02, Amended effective January 1, 2009, Amended effective July 1, 2014)*

15.03 ALL OTHER WRITS

Unless specified otherwise by statute, aAll other writ petitions (e.g., administrative writs of mandamus) s shall be addressed to the Supervising Civil Judge.

Writs addressed to the Appellate Division shall also comply with the rules in Chapter 9.

(Adopted effective January 1, 2000; Rule 15.04 renumbered as 15.03, Amended effective January 1, 2009, Amended effective July 1, 2014)

Amend

CHAPTER 15 – WRITS

15.03 ALL OTHER WRITS

All other writs shall be addressed to the Supervising Civil Judge.

Writs addressed to the Appellate Division shall also comply with the rules in Chapter 9.

(Adopted effective January 1, 2000; Rule 15.04 renumbered as 15.03, Amended effective January 1, 2009)

15.04 ADMINISTRATIVE RECORD

~~It is recommended that any~~A party ~~intending to use an~~ administrative record ~~in a case brought under section 1094.5 of the Code of Civil Procedure shall be~~ lodged along with an electronic courtesy copy (e.g., on a thumb drive), the record in the department in which the matter will be heard at least ~~five-thirty (5)30 court~~ days before the hearing.

(Adopted effective January 1, 2000; Rule 15.06 Renumbered as 15.04 effective January 1, 2009, Amended effective July 1, 2014)

Amend

CHAPTER 17– DUTIES OF ATTORNEYS

17.08 ORDERS AND JUDGMENTS SUBMITTED AFTER HEARING

- A. The party directed by the court shall prepare the findings and order after hearing, judgment and order in accordance with the court's decision, or stipulation put on the record and shall submit it to opposing counsel/party for objection or approval pursuant to California Rules of Court, Rule 3.1312 and Rule 5.125.
- B. The Court may require any party submitting a proposed order after hearing who does not obtain approval as to form from opposing counsel to submit a transcript to the Court with a cover letter explaining why it was submitted without such approval.
- C. If the parties require a transcript of the proceedings to resolve disputes over the form of order, the judge is to be advised that the transcript has been ordered and the expected date of availability of the transcript.
- D. Failure to submit Orders After Hearing in a timely manner may result in the imposition of sanctions.
- E. Orders may not include a blank judicial signature page following the text on an Order. Use footers on the signature page which would include the case name, case number and title of the document.
- D.F. California Rules of Court 5.125(f), provides that "before signing a proposed order submitted to the Court without the other party's approval, the Court must first compare the proposed order after hearing to the minute order, official transcript, if available, or other court record." In cases when the Department of Child Support Services (DCSS) has made an appearance, a signature by the Court on the finding and order after hearing constitutes notice that the Court has complied with Rule 5.125(f).

(Adopted effective July 1, 2012, Amended effective July 1, 2013, Amended effective July 1, 2014)

NEW

CHAPTER 12 –SETTING OF CONTESTED FAMILY LAW, PROBATE, ADOPTION AND UNLAWFUL DETAINER ACTIONS

12.02 AT-ISSUE MEMORANDUM

The setting of cases for trial shall be in accordance with Rules 10.901 of the California Rules of Court and these rules.

A. Any At-Issue Memorandum filed shall be on the form provided by the Clerk of the Court.

B. Approximately fifteen (15) days after the filing of an At-Issue Memorandum the Court shall set the case for trial without a trial setting conference.

C. Petitioner and Respondent must have complied with Family Code section 2104(a) and, prior to or concurrently with submission of the At-Issue Memorandum, must have filed a Declaration Regarding Service of Declaration of Disclosure and Income and Expense Declaration (Form FL-141)

If the non-submitting party has failed to file a Declaration Regarding Service of Declaration of Disclosure and Income and Expense Declaration, the submitting party must demonstrate compliance with Family Code section 2107 by:

1. Filing a Request for Order (Form FL-300) regarding non-compliance with disclosure requirements prior to or concurrently with the At-Issue Memorandum.

(Adopted effective October 1, 1998; Amended effective January 1, 2007; Amended effective January 1, 2008; Amended effective January 1, 2011, Amended effective July 1, 2014)